

HASC Fact Sheet: Oppose Smith-Gibson Amendment

“Rewarding terrorists with greater rights for making it to the United States would actually incentivize them to come to our shores or to recruit from within the United States”

Reject the Smith-Gibson amendment which would prohibit the detention and intelligence questioning of foreign terrorists. If adopted, the Smith-Gibson proposal would give more rights to terrorists than what is available to U.S. Service Members under the laws of war. Chairman McKeon is opposing Smith-Gibson and supporting language offered by Chairman Goodlatte that addresses rights for U.S. citizens specifically.

The FY14 NDAA does not change any of the considered, extensively debated and widely agreed upon policies regarding detention of terrorist detainees. The recent terrorist attacks in Boston, London, and Benghazi remind us of the continued threats we face and the need to stop future attacks. It is vitally important that we preserve the authorities to detain and question foreign terrorists who are a part of, or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States.

The House Has Already Rejected the Dangerous Smith Language

During the FY13 NDAA Reps. Adam Smith and Justin Amash offered an identical amendment to Smith-Gibson which failed by recorded vote of [182 - 238](#). In a [May 9, 2012 letter](#) to Chairman McKeon, former high-ranking officials under Presidents Reagan and Bush, including Attorneys General Ed Meese and Mike Mukasey, wrote in strong support of existing detainee language in the FY13 NDAA and expressed opposition to language offered by Reps. Adam Smith and Justin Amash.

In that May 9th letter, the former senior officials said, “Representative Adam Smith...introduced legislation that would prevent the President from ever detaining anyone, including foreign terrorists, in the United States pursuant to the AUMF...Rewarding terrorists with greater rights for making it to the United States would actually incentivize them to come to our shores, or to recruit from within the United States, where they pose the greatest risk to the American people. Such a result is perverse.”

The Smith-Gibson amendment contains **the same dangerous language** as the amendment rejected by the House last year by Reps. Smith and Amash and should be defeated once again.

The GOP Approach to Detention Policy is Sound

Last year the House acted decisively by including the Right to Habeas Corpus Act in the FY13 NDAA and Conference Report, which reaffirmed key protections. The FY13 NDAA addressed misconceptions and defended against other attempts to undermine the critical wartime authorities provided by the 2001 AUMF. It is vital that terrorists bent on waging war against the United States are treated according to the laws of war, not like simple criminals. [The Heritage Foundation](#), the [Wall Street Journal](#), and the [Washington Free Beacon](#) among others support the GOP position against Smith-Gibson.

The FY13 NDAA included the following language:

“Nothing in the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) shall be construed to deny the availability of the writ of habeas corpus or to deny *any Constitutional rights* in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.”

For more information: <http://www.armedservices.house.gov/index.cfm/detention-policy-resources-kit>